DOCUMENT RESUME

ED 163 475 CS 204 542

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TITLE Children's Television Advertising: An Ethical Morass for Business and Government.
PUB DATE Aug 78
NOTE 17p.; Paper presented at the Annual Meeting of the Association for Education in Journalism (61st, Seattle, Washington, August 13-16, 1978)

EDRS PRICE MF-$0.83 Plus Postage. HC Not Available from EDRS.
DESCRIPTORS *Broadcast Industry; *Child Advocacy; *Childrens Television; Conflict; *Ethical Values; Federal Regulation; Marketing; Mass Media; *Television Commercials
IDENTIFIERS *Advertising; *Federal Trade Commission

ABSTRACT

Differing ethical approaches increase the confusion of the controversy over children's television advertising between the Federal Trade Commission (FTC) and representatives of marketing and broadcasting. Marketers and broadcasters base the argument for the status quo on teleologic (situational accommodation) grounds; namely, the competitive nature of the marketplace makes it unthinkable for individual companies to institute any unilateral reforms in children's advertising practices. The "FTC Staff Report on Television Advertising to Children" is based on a deontologic (sense of moral right) ethical stance based on idealism and professional training to protect the underdog. Each side overplays threats and harms knowing that compromise is the inevitable result of differing opinions. However, the stances of the adversaries leave little room to consider such alternatives as reducing commercials permitted during children's television, expanding the definition of children's programing, increasing the authority of the Federal Communications Commission to institute sanctions for code offenders, and taxing station promotions in order to subsidize children's information spots to fill the time left by reducing the number of commercials. (TJ)

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CHILDREN"S TELEVISION ADVERTISING: AN ETHICAL MORASS FOR BUSINESS AND GOVERNMENT

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Children's Television Advertising: An Ethical Morass for Business and Government

The controversy over children's television advertising is a challenge to understanding and objectivity. The conundrum is produced by the issue and by the protagonists: the Federal Trade Commission and concerned representatives of marketing and broadcasting. The children's issue contributes to mystery because it involves questions of remarkable complexity. Current debate thinks little of asking us to evaluate reform based on factors such as the "cariogenicity" of food, the "isomorphic" persuasion of commercials, or the "confiscatory" nature of regulation. Those who will eventually determine public policy will have to assess reform through econometrics, child psychology and constitutional law. For even the most experienced and thoughtful, this is intellectually demanding.

To make the situation worse, objective analysis is threatened by the rhetoric of the debate. The FTC staff, knowing the nation's concern for child welfare, has proposed institution of rulemaking hearings to consider proposed reform of children's television advertising. The proposals for radical change are incorporated in FTC Staff Report on Television Advertising to Children, released in February 1978.[1] The report indicates the FTC staff is reasonably convinced that younger children are helpless before sophisticated inducements of television commercials. The staff is similarly convinced of the harm in promoting sugar foods to children. The report charges that television commercials encouraging consumption of decay-producing foods, during an epidemic of dental disease, is a hazard to health. The proposed remedies for these evils include prohibition; curtailing all advertising to children viewers under a certain age and curtailing of sugar food advertising to children of all ages (2-11 years). To justify these concerns, the report poses a powerfully sympathetic case.

Business response to the FTC staff is equally emotional. Broadcasters and marketers describe the FTC report as ill conceived, unsubstantiated and economically

disasterous for children's television. The private sector also represents the FTC interest as another incursion by "big government" on private enterprise. This ploy seeks to capitalize on public outrage at federal expenditures. To intensify public disfavor, business also charges the FTC schemes are intended to dictate how parents should raise their children. These are potent themes and will keep FTC speech writers busy for sometime.

Given the complexity of the children's advertising question, it is unfortunate that both the FTC and business are intent upon waging a public relations battle for support. The issues need more than regulatory gamesmanship to determine fair and effective policy. If the public is to have an informed view they deserve a better and more insightful perspective. They should know the self-interests and motivations of each side. It is important for us to know what each side has to gain or lose. Intelligent participation requires exploration of the values or ethics represented in the debate.

This analysis probes the ethic motivations of the protagonists. The ethic determinates of the businessman and the regulator are identified along with the conflicts in resolving means-ends relations. The examination exposes the balances struck by government and industry in choosing strategies for the debate. Finally, in anticipation of an ethic-directed impasse between the FTC and business, other remedies for the shortcomings of children's television advertising are discussed.

I. Backgrounding the Children's Television Debate

It did not take long for consumer product marketers to gauge the value of children once commercial television developed.[2] Not only was television a persuasive medium, but it became the primary recreation of many children particularly pre-literates. Eventually, the scramble for child-related profits led to some abusive exploitation of children and the Federal Trade Commission began to monitor advertising practices. FTC involvement has led to a number of successful litigations concerning production devices and potentially harmful products.[3] Informally, the FTC has also encouraged more stringent corporate control over practices. Despite these activities, the FTC and its sister agency, the Federal Communications Commission, have been criticized by consumer groups for being too leninet in children's advertising and television.

Since 1970, consumer advocates Action for Children's Television and Council on Children, Media & Merchandising have repeatedly challenged the federal agencies to prohibit television advertising to children.[4] Reception has varied from mildly affirmative to strongly negative depending upon the priorities of the staff and the political personalities of the commissioners. The current FTC headed by Michael Pertschuk has been the most receptive. Under Pertschuk's direction a special study group of researchers and attorneys has recently produced a 346 page report.

After an intensive review, the staff urged the opening of rule-making hearings towards adoption of several regulations.

a. Prohibit television advertising of all products in programs where there is a "significant" (but unspecified) proportion of children 8 years old and younger.

b. Prohibit television advertising of sugar-loaded foods (unspecified) in programs where there is a "significant" (unspecified) proportion of children viewing between 8-11 years.

c. Require nutritional disclosure by manufacturers of food products with lower sugar levels (unspecified) than those of highest cariogenicity.[5]

Though the FTC commissioners generally expressed reluctance to impose prohibitions, they agreed on the necessity of hearings.[6]

II. Ethics as a Corporate and Regulatory Determinate

Ethics is a cognitive and affective process which allows man to interpret the consequences of behavior based on notions of right and wrong. It is a scale to weigh means and ends, consequence and benefit and justification and excuse. Our understanding of such a structure dates to Aristotle. He described the process as a personal/internal morality. Modern civilization has extended ethics to include external forces both religious and earthly. Those describing the external references for ethics say these outside forces complicate our decision selection by making us face a conflict of rights. Kenneth Manning identified the choices as the personal or "deontologic" duty and the external the "teleologic".[7] Deontologic ethics orders decisions on our sense of moral right, while the teleologic mandates situational accommodation.

It is the teleologic ethic that has undergone recent interpretation, if not popularizing. Civil disobedience and Watergate events required special behavior explanations in recent history. We identified the rationalizations as situational ethics - a reference of expediency. The civil rights marcher and the environmentalist demonstration was justifyable in conflict with logic and law. Certain occasions, demanded a departure from society's rules to serve a greater welfare. Law has only relative obligation when balanced by circumstantial need (goal).[8]

As society became familiar with situational ethics, numerous groups justified illegal behavior in expedient contexts. Stealing, graft and perjury were often compelled by circumstances. Government confiscated, wiretapped and intimidated citizens to protect our "security." Business admonished critics by showing teleologic necessity for payoffs, extortion and other industrial sabotage. Society does not always accept this ethical logic but it is sympathetic to the influence of variables beyond our control.

Adoption of situation ethics means many of us have two ethic sets to guide decision selection - one a personal reference of moral certitude, the other external for goal attainment. Examination of the children's television advertising controversy is illustrative of the interaction of both ethic sets in advocate positions. Ironically, both business and the FTC begin with a common concern for children but the positions quickly diverge as separate ethic balances are struck.

III. Ethics of Competition

The fusillade of criticism towards children's television makes it difficult to believe marketers and broadcasters are parents and capable of genuine concern for children. Many assume because these industries share an economic interest in children's television, that neither can see television's faults. The situation is not that simple. Responsible corporate leaders know children's cognitive and emotional facilities make them deserved of greater legal protection than adults. Broadcasters know television has an unrealistic influence over children compared to other institutions. Both marketers and broadcasters realize small children are

least capable of defending against persuasive commercials and they know that small children view too many.

In these admissions the corporate individual exposes the deontologic ethic - knowledge of what should be. Unfortunately these moral references are not in control of the decision making. As much as the executive personally believes in child welfare and supports change, the competitive nature of the marketplace forecloses reform. Any conflict in ethic sets is resolved in favor of competitive (teleologic) expediency. Examining some market factors will illustrate how competitive conduct directs decision making.

It is difficult to place a specific market value on children's influence on sales. The combination of toy, food and drink markets is a multi-billion dollar effort. Markets of this magnitude attract heavy competition and current Broadcast Advertising Reports show more than 20 RTE cereals, over 25 brands of candy and gum and 15 major toy and game companies competing for child preference. These are joined by firms who, though they do not market products directly to children, use children to lobby parents. This makes a customary marketing dilemma - a large dollar market is splintered by numerous competing brands.

The media expenditures in television illustrate the medium's central role in marketing schemes. According to current industry estimates, advertiser investment in recognized children's programming will amount to $450,000,000 in 1978.[9] For broadcasters the prize of near a half billion dollars has intensified competition to attract the advertiser. The key is programming. In local market activity, the primary daypart for children's programs is late afternoon, known as early fringe. Program period syndicators now offer more than 20 programs (off-net situation comedies, cartoon and live action advertures, etc.) that have competitive children's rating histories. The turnover is great as stations shift titles to improve share positions. In network television children's program competition is worse. The following table shows an astonishing turnover of programs in only three seasons. It underscores the struggle for advertiser's dollars.

Network Children's Programming
(Saturday Morning Changes)

Season	Total Shows	Renewed for Next Season	% Dropped
1974-75	34	20	41
1975-76	34	14	59
1976-77	32	11	66

Sources: A. C. Nielsen NTI
Tele-Radio Age Mag.
Broadcasting Mag.

The value of children's programming to the advertisers is that it delivers a large children audience at an efficient cost. FTC proposals would likely shift advertisers out of these premium children blocks and make clients seek other program periods to reach children. The obvious remaining choice is prime evening but as this table shows the cost prospects are not good.

Rating/Cost Comparisons
for Children's Viewing

Daypart	Avg. Child Rating	Cost Per 30 Second	Avg. Cost Per M (Children)
Prime (7-9p.m.)	15.7	$48,000	$10.75
Fringe (4-6:30p.m.)*	5.5	13,200*	6.00*
Saturday Morn.	11.8	8,500	2.05

* based on 200 markets

Source: A.C. Nielsen
Tv B.

Faced with over a 500% increase in cost per thousand, it is questionable if child product marketers would maintain current television budgets. Should marketers opt for print or other media to support children's marketing, broadcasters could not compensate for the billings lost. The threat of an advertiser pullout would historically parallel the effect of the cigarette advertising prohibition.

Situation circumstances also control individual corporate policies. With so many brands and profit stakes so high it would be unthinkable for individual marketers or broadcasters to institute any unilateral reforms in children's practices. Few companies would: put less sugar in a brand, modify commercial announcements or run fewer commercials. They fear enriching the competition. Corporate managers conclude losses in sales or loss in ratings can not be balanced by goodwill. Given the economic demands humanity would have to be a secondary ethic.

The result of the competitive circumstances is that, despite personal concerns, corporations resist any regulatory intrusion and reject unilateral reform. They will not risk capital in pursuit of moral ethics. Business, however, is not the only party to ethical compromise.

IV. Regulatory Ethics

Much discussion surrounding the children's advertising controversy is aimed at the FTC staff report's content. As noted earlier, the main themes decry the evil of sugar food promotion, declare all commercials directed to young children unfair and urge prohibition of commercials. The tone of the report is not likely to appeal to commercial interests. It is adversarial, aggressive and unequivocally pro-consumer. The report style is provocative and is designed to promote debate. Obviously, there is little in the report proposals that is easy for business to accept. In fact, the proposals may not gain Commission support. By taking a hard line, the staff authors risk FTC approval and invite a vigorous and intensive business defense.

A more moderate proposal would have eased commission concerns. A more moderate remedy would have made the harm issue easier to justify. But the staff chose a tougher path. The circumstances are ethic involved and make the FTC staff's strategy somewhat clearer.

a. Proposing a radical remedy

The pivotal issue in the staff's presentation is the recommendation of remedy. Though the FTC has historically been given wide discretional latitude in remedy selection, the courts will challenge if the remedy does not fit the practice. With other less severe remedies available, the test is whether prohibition will be accepted by the Commission and the courts. Is prohibition realistic? The odds are against it.

The FTC staff is aware that many take a dim view of any regulation that appears confiscatory. Marketers, forced to abandon rich television-media opportunities will present a substantial case for economic harm. The FTC staff will have to show a greater State interest in protecting the children. Business will present a First Amendment challenge to prohibition. As the current Supreme Court is supportive of advertising's informational rights (peoples' right to know) any notion of abridgement must be balanced with a greater threat to health and safety. Prohibition of advertising will receive close judicial scrutiny. The courts will test a censorship rule by asking the FTC if prohibition is the "least means" to remedy the condition. The FTC cannot meet this test unless the case gets stronger. Whatever chance prohibition has depends on how well the FTC proves television is harming children. The evidence for State interest will have to be beyond doubt.

b. Documentation of harm

The report presented a carefully considered and thoughtful series of arguments in support of a contention of harm. The authors sought testimony of social and scientific authorities and cited numerous psychological studies. Despite this effort, the evidence is not yet conclusive. The case for abridging commercials to younger children will illustrate.

The FTC staff cited 12 specific studies done by marketing and communication researchers documenting television's abuse of pre-schoolers' perceptions.[11] In any area of controversy regarding psychological effect it is accepted practice to present substantial amounts of the literature before attempting conclusions. Similarly, in experimental areas that have only been producing good data for 10 years, it is expected literature presentations reflect latest findings. In both respects, the FTC report is questionable. A recent National Science Foundation (NSF) report includes a bibliography of research done involving children's

television advertising.[12] While the FTC cited 12 studies, the NSF identified more than 120 available to the FTC staff. Similarly, 4 of the 12 studies cited by the FTC were completed since 1975 where NSF listed 30! Would the additional studies have changed the FTC's assessment? Not likely. While there is still a sizeable body of child research showing unhealthy TV influence, it is arguable if the data is sufficient to satisfy the requisite harm for prohibiting advertising. The staff's selective use of studies was intended to make the best possible case.

What motivates the FTC to attempt an innovative and dramatic solution? What compelled the defense of a radical remedy? Why risk criticism for using partisan research methods? Business would have us believe the FTC staff is naive and ignorant in research interpretations and is meddling where it has no expertise. This does not appear to be the case. The authors of the report are bright and have had counsel and guidance from expert psychological consultants. There is a more logical explanation.

Idealism still exists in Washington and it is not easily masked in the children's issue. For many frustrating years the FTC has struggled to design a comprehensive program for the reform of children's advertising. For reasons to numerous to record here, the task was never accomplished. But the desire for reform never left and children remained a priority. A political change in the White House brought changes in FTC personnel and the new staff are determined to succeed where others had failed. In their law school training and in their professional experience these men and women dedicated themselves to the public, the consumer, - the underdog. A priority to children was the problem to be addressed. To this select group of men and women the children's cause is a crusade. The morality of their duty overshadows external circumstance.

Ethical idealism isn't the sole variable to explain the FTC staff position. There are practical motives as well. It is well known in regulatory negotiation that both sides purposely overplay threats and harms. Seldom does one party propose its least acceptable solution as the opening gambit. Instead one asks for much more than they ever expect to gain, knowing negotiation invariably means some sacrifice. Neither the FTC or business will tell us what they expect to gain or lose in children's television advertising but there are settlement levels at something less than the lines in the public debate. The FTC staff report suggests the worst evils of television advertising to support the harshest but cleanest means to improve the child's environment. It is a calculated risk composed of moral idealism and only a small touch of strategic reality.

The foregoing should not imply that the FTC and business interests will soon play out the game and forge a quick compromise. On the contrary, the ethic positions are very deep and will limit cooperation. Business, though concerned about children's practices and public opinion, is intimidated by government threats of intervention. The FTC staff understands a novel and radical remedy is hard to impose. But they also seem bound to a cause that demands complete amelioration. The expectations are for protracted debate with numerous ploys used for public and Congressional support. While the hearings continue, other means to improve children's television advertising will be shelved. The pity of this is that it delays consideration of other changes or remedies. In particular the FTC-business confrontation allows us to avoid what broadcasting and the FCC could do now to improve children's advertising.

V Alternative Remedies

The FTC report was narrowed to a few of the unacceptable aspects of television advertising to children. There are other problems, and other solutions. The following remedies address other concerns in a child's television ecology.

1) Reduce commercialization. In 1976 the NAB code authority lowered the allowable limit for non-program material in children's programming. But it is not low enough. If children are less capable and less sophisticated than adults why should they all see the same level of commercials? The following is more appropriate for a child's perceptual capacity.

Daypart	Non-Program Minutes allowed by NAB code Current	Proposed
Sat-Sun Morn. (KID'ID)	9.5	6.0*
Prime Eve.	9.5	6.0*
M-F Daytime	12-16**	9.5*

*Applied to all "children's interest" programs. See Below.

Source: NATBC (1976)

* * 12.0 for "children's programs" and 16.0 for others.

These changes will reduce revenues for broadcasters unless continued upward adjustment of prices for remaining minutes compensates.

2) Redefine "children's programming" to child interest programs. Current NAB codes and those developed by the Children's Advertising Review Unit of the CBBB do not apply to enough child viewing. As presently defined application of these codes to "childrens programs" covers slightly more than 10% of child viewing.

Instead of using arbitrary definitions of children's programming, determination should be based purely on the incidence of child viewing; the program's audience composition. For code application to television the designation of child's interest program should be given to any show where 20% or more of the viewers are children. This lower percentage compensates for the fact that children are a viewing minority (slightly more than 16% of all viewers are between 2-11 years). Higher ranges are unrealistic.

For example, saturday morning network "KIDVID" averages 55.6% children viewers.

Illustrative of the effect of the 20% factor, network family hours (7-9 p.m.) were screened to identify regularly scheduled programs. The table below shows the results.

Family Hour (7-9 p.m.) Programs	Family Hour # with 20% + child viewers	% Code Susceptible Current Code	% Code Susceptible Proposed Code
33	13	0	39%

Source: A.C. Nielsen NTI (1977)

Similar success will be found in application to local programming where off-network situation comedies are involved. It is time the "Gilligan's Island" and "Brady Bunch" are rightfully reclassified as children interest programs.

3) FCC Oversight on Code Compliance. Codes have no sanction for members who abuse guidelines because such activities are illegal under current antitrust laws. Further, there is no stigma to non membership - certainly not an economic one. Some oversight is needed to tighten control. A recent decision by the District of Columbia Court of Appeals argued the FCC had the discretion to oversee operation and compliance in self regulation of broadcast.[14] The FCC should take sincere interest in stations who exceed commercial limits, who allow abusive host selling to children or who run non-code commercials. Reports on such activities should be placed in license files. At time of renewal such information could prove enlightening.

4) "Tax" Station Promotion to Subsidize Children's Information.

An earlier recommendation urged reduction of commercials in child interest programs. The holes could be admirably filled with television industry produced information units. Topics of child interest could include: toy safety, dental hygiene, food nutrition and energy economics. Funding for the production could come from requiring stations and networks to pay something for time spent in program promotion. According to a recent ANA study 4% of all television time and 20% of non-program time is spent in program puffs, voice-overs and shared station identifications. The street value of this time will reach nearly $1.6 billion in 1978. If television paid 10% to children for use, a fund in the area of $100,000,000 could be generated. That sum could finance an impressive number of short program units. Should stations limit promotion to avoid the surcharge the public gains from less "clutter."

The point of these suggestions is to underscore possibilities between the status quo ante of business and censorship proposals by the FTC.

VI Summary

Many decisions in economic life are dictated or manipulated by ethics. In most individuals and organizations, different and separate sets of ethics co-exist to help fashion appropriate responses Much of our behavior historically has been guided by a deontologic ethic or moral sensitivity to right. This is a visceral reference that gives a personal side to responsibility. On occasion, external goals or the teleologic ethic, direct decision processing. The goal orientation is tuned to the situation and we revise and adjust interpretation according to these external references. There are circumstances where the personal morality conflicts with external goal seeking. When this occurs, the individual or organization must decide which reference or ethic set will guide decisions. It is not always a harmonious balance and dissonance is not unexpected.

The protagonists in children's television advertising have illustrated the operation of ethic sets. From our analysis we learn that both business and government believe in a special welfare for children but only one side will let a personal ethic dictate strategy. For the other, the situational ethic is predominate and it demands little or no action. Specifically, marketers and broadcasters admit need for reform but bow to the compulsion to sustain competitive advantage. The situational circumstance is exacerbated by government's desire for radical and harsh remedy. Capitulation to prohibition, no matter what the issue, is unthinkable for the business sector. The FTC staff's dilemma is ethical as well. Regulators have waited too long to make necessary reforms in children's television and television advertising. Frustrated by their inability to foster change and infuriated by commercial intransigence, the FTC presents a case of severe abuse and urges a dramatic and innovative remedy. Ignoring the realities circumscribed by the situation (radical remedies are political pariahs) the staff appears compelled to honor a fierce duty ethic; a personal commitment to social responsibility.

The conjoint is an ethical morass; where values and strategies are stretched and distorted. The confrontations are likely to be bitter and protracted and it is questionable how much reform will be produced. Delay should be unacceptable but the public has waited 10 years and it will be patient for more. The losers, while we wait to measure the victory of business or government, are the children.

Endnotes

1. Federal Trade Commission, (Washington D.C.:FTC Print) February, 1978. Hereafter cited as Children's Report.

2. Melody, Children's Television, (New Haven:Yale University Press, 1973) pp. 33-55, passim.

3. Among the more notable FTC child actions are: Ideal Toy Co., 64 F.T.C. 297 (1964); Mattel, Inc., 79 F.T.C. 667 (1971) Topper Corp. 79 F.T.C. 681 (1971), ITT Continental Baking Co., 83 F.T.C. 865 (1973), Benton & Bowles, Inc., 88 F.T.C. 1 (1976), Hudson Pharmaceuticals, 89 F.T.C. 82 (1977).

4. Thain, "Suffer, the Hucksters to Come Unto the Children?" 56 B.U.L. Rev. 651 (1977).

5. Childrens Report, op. cit., pp. 42-50.

6. Memoranda from Chairman Pertschuk and Commissioners Elizabeth Dole, Paul Rand Dixon, David Clanton on file at the FTC and William Allen White School, University of Kansas. Hereafter cited as Commissioners' Response.

7. Manning, "Socio-Ethical Foundation for Meeting Obligations of the Legal Profession," 5 Cumberlund-Samford L. Rev. 237, (1974)

8. Hart, "Positivism and Separation of Law and Morals," 71 Harv. L. Rev. 593 (1958)

9. Television - Radio Age, "Children's Television...," Volume 25, Number 18, April 24, 1978.

10. All commissioners except the chairman expressed concern over prohibiting commercials. See Commissioners' Response, op. cit., note 6.

11. Other references implied additional and corroborative research but the studies were not named. See notation of Dr. Kenneth O'Bryan's testimony at p. 84 and citations of Congressional testimony at p. 101, 104. Children's Report, op. cit., note 1.

12. National Science Foundation, Research on the Effects of Television Advertising on Children, (Washington D.C: U.S. Printing Office) 1977.

13. N.S.F. Study, op. cit., Ibid., pp. 15-18.

14. Action for Children's Television v. FCC, 564 F. 2d 458 (D.C.Cir. 1977).